

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Progeny LMS, LLC)	RM-10403
)	
Petition for Rulemaking to Amend Part 90)	
of the Commission's Rules Governing the)	
Location and Monitoring Service)	

REPLY COMMENTS OF AXONN, LLC

Axon LLC ("Axonn"), by and through counsel, hereby submits its Reply Comments in the above captioned proceedings. Axonn agrees with comments submitted by WaveRiderCommunications Inc., ("WaveRider"), the License-Exempt Alliance ("LEA"), SchlumbergerSema Inc. ("SSI"), Itron, Inc. ("Itron") and Ricochet Networks Inc. ("Ricochet"), which highlight the four main deficiencies in Progeny's proposal. In suggesting that Progeny's Petition for Rulemaking be denied, the following defects were consistently discussed:

- The Commission has already ruled against similar proposals on multiple occasions.
- Progeny offers no new evidence of changes in the market place, no meaningful analysis, and an insufficient amount of substantive detail.
- The changes proposed by Progeny will be harmful to Part 15 users.
- When the Licenses were sold at auction, bids were submitted with the knowledge and expectation that the restrictions were to remain in place

These Issues Have Already Been Decided

In their proposal, Progeny seeks to drastically change the current rules and regulations by eliminating: the spectrum cap, the restrictions on real-time interconnection and types of services, and the safe harbor provisions. These rules are the result of a long and arduous task of balancing the concerns of all of the parties that use the band and the public interest.¹ In addition, the Commission has already reconsidered and affirmed these rules and regulations on multiple occasions.² While Axonn does not assert that a previous ruling by the Commission precludes the issues from being addressed again, it agrees with Itron that the “proponent of a Commission rulemaking bears the burden of demonstrating that the rule changes it is proposing are in the public interest.”³ Especially, as in this case, where the FCC has so recently addressed in its rulemaking proceedings the changes proposed by Progeny.⁴

Progeny Offers No New Evidence of Changes in the Market Place, No Meaningful Analysis, and an Insufficient Amount of Substantive Detail.

Axonn agrees with the other Commenters that Progeny failed to provide substantive data to support its position that a rulemaking in this matter is warranted.⁵ Instead, Progeny claims that the marketplace has changed so dramatically since it purchased its licenses that it justifies changing the very rules that allowed for the creation of LMS in the first place. No industry or market data is given to support this claim. The

¹ SSI at 2.

² Id. at 4.

³ Id.

⁴ Itron Comment at 3.

⁵ LEA at 3.

only evidence Progeny offers is its own inability to obtain capital and equipment.⁶

In support of its position, Progeny claims that the proposed changes are consistent with the Commission's philosophy of regulatory flexibility.⁷ Regulatory flexibility, as Progeny describes it, emphasizes flexible allocations and service rules. Progeny claims the current LMS Rules and regulations are out of sync with this philosophy.

Axonn agrees with Itron, that pursuant to Section 303(y) of the Act, the Commission cannot not pursue spectrum flexibility if the result would be harmful interference.⁸ Even in the cases cited by Progeny, in which service rules were liberalized, the Commission maintained their interference objectives.⁹ As WaveRider, so aptly points out, the instances where the Commission supported spectrum flexibility were all cases that involved licensees who had exclusive use of the frequency band.¹⁰

Proposed Changes will be Detrimental to Part 15 Users

Axonn, WaveRider, the License Exempt Alliance, Itron, SchlumbergerSema Inc. and Ricochet Networks all agreed, that Progeny's proposed changes, particularly the elimination of the safe harbor provisions, would be disastrous not only to the equipment manufactures of the Part 15 devices, but also to the average consumer that relies upon unlicensed devices in their everyday life. The safe harbor provision was also designed to

⁶ Itron at 7.

⁷ Itron at 4.

⁸ Itron Comment at 5.

⁹ Itron Comment at 4.

¹⁰ WaveRider Comment at 9.

give Part 15 manufacturers the ability to rely upon the promulgated Rules in their research and development of Part 15 devices.¹¹

“...the Commission recognized the concerns of Part 15 and amateur interests with respect to their secondary status. Accordingly, in order to alleviate such concerns and to provide all operators in the band with a greater degree of certainty in configuring their systems, thereby promoting competitive use of the band, the Commission adopted the safe harbor definition of non-interference.”¹²

In reliance on these rules and regulations, Part 15 users have spent billions of dollars developing and deploying technology that fits within the safe harbor.¹³ Granting Progeny’s request for a rulemaking would not only cause the waste of all of these resources but, would eliminate the certainty created by these provisions, which is responsible for the “flourishing activity and competition brought by the Part 15 operators.”¹⁴

The Rules and Regulations Set the Market Price at Auction

Ricochet, WaveRider and Axonn believe that granting Progeny’s request for a rulemaking would be a contravention of the LMS auction.¹⁵ For each auction, every person or entity is given the same information upon which to base its decision to participate or not participate. Included in this information are the rules and regulations that restrict the use of the license. Using this information the entities bid what they feel is

¹¹ Amendment of Part 90 of the Commission’s Rule to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docet 93-61, 12 FCC Rcd 13942, ¶ 32 (1997).

¹² *Id.*

¹³ Ricochet Comment at 14

¹⁴ *Id.*

¹⁵ Ricochet Comment at 18.

7.

fair value for the restricted licenses. Therefore, Progeny knew, at the time, what it was purchasing at the auction, and paid what it felt was the appropriate price for the licenses. Progeny now requests the restrictions on the license to be lifted thus allowing it to gain an unrestricted license at a severely discounted price.¹⁶ Such a drastic change would be against the public interest.¹⁷

LMS Wireless

LMS Wireless (“LMSW”) is the only commenter who agrees, albeit only in theory, with Progeny. LMSW’s comments express their agreement with the majority of Progeny’s ideas, but mostly reference to their own proposed changes. While Axonn feels LMSW’s “ATLIS” proposal is ill-timed and irrelevant to the current proceedings, we feel that the defects in the proposal should be addressed.

As stated earlier in this discussion of Progeny’s Petition, the issues regarding LMS have already been decided by the Commission. Seeking additional review of the LMS rules is nothing more than an untimely request for reconsideration of the LMS rules. LMSW purchased its LMS licenses with full knowledge of the rules and regulations it now seeks to eliminate.

Although we acknowledge that LMSW’s ATLIS proposal is still in its preliminary stage and not properly before the Commission, it seems to fall victim to the same evidentiary deficiencies that should lead to the denial of Progeny’s proposal. The ATLIS proposal lacks any evidentiary support for its claims. For example, LMSW claims that ATLIS will lower costs, produce economies of scale, and provide quality

¹⁶ Ricochet Comment at 18.

¹⁷ WaveRider Comment at 7.

advantages.¹⁸ However, no meaningful analysis or even raw data accompanies this proposal so that each commenter may perform their own analysis. Similarly, LMSW claims that Part 15 users are abandoning the 902 – 928 MHz band at a high rate is premature. The only support provided to substantiate these claims is the title of a proprietary research report purchased by LMSW and visits to retail outlets.¹⁹ It is simply not true. Axonn manufactures or licenses many 900 MHz Part 15 devices. Axonn assures the Commission that interest in 900 MHz by Part 15 users and manufacturers is robust. Nevertheless, the ATLIS proposal would not meet the required burden were it filed in a petition for rulemaking.

Like Progeny, LMSW appears to ignore the value of Part 15 devices and seeks to eliminate them for the benefit of their own business plan. While Progeny seems content to let Part 15 users' demise arrive slowly, removing all restrictions created to allow Part 15 users to co-exist with LMS providers, LMSW seeks to proactively ban Part 15 users from the band. Citing their claim that Part 15 users are leaving the band and stating that remaining Part 15 users will not be able to remain in business, LMSW proposes that Part 15 users be "phased out" of the band by 2005.²⁰ Axonn wonders whom does LMSW propose to pay the extensive costs of replacing all of the systems currently in place which use Part 15 devices on the 902 - 928 MHz band. Perhaps LMSW believes the consumer or the government should pay the expense, or maybe LMSW will volunteer its own resources. LMSW much like Progeny seeks to completely change the band, not for the good of the public, but for the good of their bottom line.

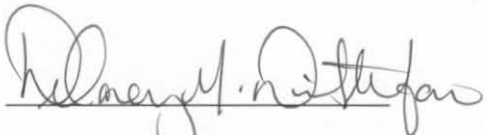
¹⁸ LMSW Comment at 49.

¹⁹ Id. at 65.

²⁰ Id. at 43.

Therefore, Axonn LLC believes that a rulemaking proceeding regarding LMS is unwarranted and unnecessary and hereby opposes Progeny's Petition for Rulemaking.

Respectfully submitted
Axonn, LLC

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Certificate of Service

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